Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 4(g) of the	)	
Cable Television Consumer Protection	)	MM Docket No. 93-8
Act of 1992	)	
	)	
Home Shopping Station Issues	)	

To: The Commission

COMMENTS OF THE CENTER FOR THE STUDY OF COMMERCIALISM

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SUMMARY

Since 1981, the Commission has engaged in an experiment which it must now admit has failed. When the Commission repealed its commercial guidelines for broadcast licensees, it was confident that "marketplace forces" would control overcommercialization. But the growth of broadcast stations which fill the vast majority of their broadcast day with commercial sales presentations and "infomercials" is a sad testament to the fact that its confidence was misplaced. The Commission must now keep its promise to revisit this matter and in act to limit this blatant overcommercialization. Such an action would be fully consistent with Congress' intent in enacting Section 4(g) of the 1992 Cable Act.

Restrictions on the amount of home shopping and infomercial programming and policies discouraging overcommercialization would doubtless pass constitutional muster. The First Amendment, as it pertains to the broadcast medium, protects first the public's "paramount" right "to receive suitable access to social, political, esthetic [and] moral" information. Conversely, protection for pure commercial speech is very limited - government regulation in this area must only "reasonably fit" the government's interest. Plainly, limitations on home shopping programming and infomercials "reasonably fit" the government's interest in protecting the public's First Amendment rights.

In addition to the three factors which Congress has required the Commission to consider, any determination the Commission makes as to whether these stations are serving the public interest must include at least one other critical inquiry: Whether a broadcaster which, typically broadcasts, each hour, 5 minutes of arguably community responsive programming and 55 minutes of non-stop commercial sales presentations designed to serve its own private, pecuniary

interest, can be said to meet that standard? The answer is a firm "no." Both Congress and the Commission have found that overcommercialization is antithetical to the public interest and 55 minutes per hour far exceeds any commercial limit the Commission has previously permitted.

Even if the Commission finds that stations predominantly utilized for home shopping programming or infomercials do operate in the public interest, they should not be granted a renewal expectancy, which generally insures renewal. The Commission should find that 5 minutes of so-called "public interest programming" surrounded by 55 minutes of commercial matter does not rise to the level of "substantial performance" necessary to be given a renewal expectancy. In the event these stations are not found to be operating in the public interest, these same principles should guide the one-time renewal that would occur after the transition period afforded under Section 4(g) for these stations to change their programming.

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COMMENTS

The Center for the Study of Commercialism ("CSC") hereby respectfully submits these comments in response to the Notice of Proposed Rulemaking, 8 FCC Rcd 660 (1993) ("NOPR") issued in the above matter. The NOPR seeks comment, inter alia, on the implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act" or "the Act"), which requires the Commission to determine whether broadcast stations which are predominantly devoted to sales presentations or program length commercials are serving the public interest, convenience and necessity. For purposes of simplicity, these varying formats are collectively referred to herein as "home shopping programming."

INTRODUCTION

The Commission has the authority, and the duty under the public interest standard of the Communications Act to find that broadcast stations which typically broadcast 55 minutes of

Commission must now do so.

Placing limitations on stations predominantly utilized for home shopping programming would promote more non-commercial speech on television and thereby advance the core First Amendment objective of creating a well-informed electorate. By contrast, commercial speech of this type is less favored under the Constitution - in view of the substantial governmental and First Amendment interest in promoting a diversity of views and in maintaining an informed electorate through free-over-the-air broadcasting, a limitation on licensing such stations would certainly withstand First Amendment scrutiny.

Even in the event the Commission determines that stations predominantly utilized for home shopping programming do operate in the public interest, it should find that 5 minutes of presumably community responsive programming surrounded by 55 minutes of commercial matter each hour is not "substantial performance" which entitles the licensee to a renewal expectancy. The Commission has, in the past, included dramatic entertainment programs and other non-commercial matter in granting renewal expectancies where community responsive programming has only met the most minimal standards. But even if home shopping stations do meet that bare minimum, they do nothing more, and should not be rewarded at renewal time.

I. WHAT IS A STATION PREDOMINANTLY UTILIZED FOR HOME SHOPPING PROGRAMMING OR PROGRAM LENGTH COMMERCIALS?

To determine whether home shopping stations serve the public interest, it is first necessary to examine exactly what typical "home shopping programming" is, and to define what is a station which is "predominantly utilized" for such programming.

A. Typical Home Shopping Programming.

The most common format employed in over-the-air home shopping programming

contains about 55 minutes of commercial sales presentations, devoted exclusively to sales of products, which can be ordered by calling a telephone number superimposed on the screen. The remaining portion of each such hour is used to provide informational programming, some of which is purportedly designed to address community needs.[1] In some cases, especially where stations use the format on a part-time basis, the sales presentations appear for the entire 60 minutes of the hour.[2]

Other "alternative" home shopping formats continuously broadcast program length commercials, or "infomercials," typically one half hour in length. These infomercials are typically dedicated exclusively to demonstrating and then selling a certain product, which can oftentimes be ordered by calling a telephone number superimposed on the screen. Program length commercials of this type were at one time expressly prohibited by the Commission. E.g., Auction Programs As Program-Length Commercials, 69 FCC2d 682 (1978); Program Length Commercial Policy Statement, 44 FCC2d 985 (1974)[3]

B. Definition of "Predominantly Utilized."

The NOPR solicits comment on how to identify stations which are "predominantly utilized for the transmission of sales presentations or program length commercials," and therefore subject to Section 4(g). The Commission proposes to define the term 1) by the number of hours a station devotes to home shopping programming between the hours of 6:00 a.m. and midnight; 2) by the percentage of time a station devotes to home shopping program-

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[1]These "public interest" inserts typically are rebroadcast repeatedly over a period of several weeks or months.

[2]A portion of the profits gained from these sales presentations goes to the licensee.

[3]Licensees generally are also given a portion of the profits obtained from infomercial sales.

ming (e.g., 50 percent); or 3) by consideration only of the station's prime time programming. NOPR at ¶5.

CSC adopts the definition of "predominantly utilized" proposed by the Consumer Federation of America and the Media Access Project ("CFA/MAP") in their January 4, 1993 comments in MM Docket No. 92-259, the "Must Carry" rulemaking. CSC believes that this definition would more accurately reflect viewership realities and patterns. Under this approach, any station which devotes at least 50 percent of its operating time on any particular day to home shopping programming or to program length commercials would be subject to Section 4(g). Unlike the general 50 percent cap that the Commission proposes, CFA/MAP's approach would deny must carry privileges to licensees who reserve all prime-time periods and all periods of high viewership solely for commercial presentations.

The 50 percent daily cap that CSC proposes would include all commercial matter carried at any time during a station's daily operation. Thus, spot commercials carried during non-home shopping programming would count toward the 50 percent daily cap.[4]

Regardless of the approach that the Commission adopts here, the focus should be on periods of high viewership. The Commission must not permit stations to place all their non-home shopping programming during "graveyard" hours and thereby avoid coming under Section 4(g).[5]

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[4]The Commission should reserve the right to exercise its authority to redefine "predomi-

II. THE COMMISSION HAS BROAD AUTHORITY UNDER THE COMMUNICATIONS ACT TO REGULATE THE AMOUNT OF COMMERCIAL SPEECH BROADCAST OVER THE PUBLIC'S AIRWAVES.

Section 303 of the Communications Act of 1934, 47 U.S.C. §303, confers upon the Commission the authority to regulate broadcasting as the "public interest, convenience, interest or necessity" requires. On the basis of this standard, the Commission is empowered by Section 303(a) to "[c]lassify radio stations" and by Section 303(b) to "[p]rescribe the nature of the service to be rendered by each class of licensed stations and each stations within any class."

From the very inception of broadcast regulation, the public interest standard has been regarded as requiring that licensees be precluded from excessive commercialization, and giving government the power to so regulate. See, e.g., 1960 En Banc Programming Statement, 44 FCC 2303, 2313 (1960).

A. The 1927 Radio Act.

Since the very early days of broadcasting, the Commission and its predecessor, the Federal Radio Commission ("FRC"), found the public interest standard as being incompatible with use of the airwaves simply for generating revenues for the licensee.[6]

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this may not contravene the public interest. See, Sen. Conf. Rep. 102-92, 102nd Cong., 1st Sess. at 96 (1992) (Denial of must carry rights to stations predominantly utilized for home shopping programming and infomercials does not apply "to stations which program sales presentations or program length commercials during only a portion of their broadcast day.")

[6]Herbert Hoover, a key architect of the public interest regulatory mechanism, asserted that

In the earliest declaration of this policy, the FRC acknowledged that "without advertising, broadcasting would not exist,..." Great Lakes Broadcasting Company, 3 FRC Ann. Rep. 32, 35 (1929), aff'd, 37 F.2d 993 (D.C. Cir. 1930), cert. dismissed, 281 U.S. 706 (1930). But the FRC also emphasized that excessive commercialization would destroy the very principle of service in the public interest. Thus, the FRC announced that "the amount and character of advertising must be rigidly confined within the limits consistent with the public service expectations of a station." Id. at 32. In permitting advertising, the FRC specifically warned that "regulation must be relied upon to prevent the abuse and overuse of the privilege." Id. at

Mr. Fess. I could hardly support a proposition of that kind.

Id. (statements of Senators Couzens and Fess).

And Senator Wagner, who had proposed the amendment, defended it by insisting that it would not permit excessive commercialization:

> Mr. Wagner. Mr. President, of course I deny that statement. There certainly is a difference. I think we must be candid about that-between being able to use for commercial purposes a sufficient time to have the station self-sustaining a making a profit out of it. There is a tremendous difference between the two things.

Id. (statement of Senator Wagner).

C. FCC Administration Of Overcommercialization.

Initially, the Commission regulated excessive commercialization on a case-by-case basis. Radio Deregulation, 84 FCC2d 968, 1091-1092 (1981). In 1969, the Commission implemented specific guidelines which governed the quantity of commercial matter that could be broadcast. NOPR at ¶3. While the Commission eliminated those guidelines in 1981 (for radio) and 1984 (for television), it did not then, and has not since, relinquished its authority to regulate commercialization in the public interest, or expressed any doubt as to its obligation to insure that public airwaves are not misused for excessive commercialization. See, TV Deregulation, 98 FCC2d 1076 (1984); Radio Deregulation, supra, at 1006. [Subsequent histories omitted.][7]

It is of particular significance that the FCC's decisions eliminating commercialization

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[7]The Commission's power to regulate under Title III of the Communications Act is the same for radio and television broadcasting. The TV Deregulation decision was specifically modeled after the earlier Radio Deregulation decision, and adopted the same principles as the former.

guidelines were rooted in the notion that overcommercialization is antithetical to the public interest. The theory of these decisions was that marketplace forces alone would be sufficient to protect against excessive commercialization. The Commission stated that

> commercial levels will be effectively regulated by marketplace forces....In sum, it seems clear to us that if stations exceed the tolerance level of viewers by adding 'too many' commercials the market will regulate itself, i.e., the viewers will not watch and the advertisers will not buy time.

TV Deregulation, supra, at 1105.

In lifting its guidelines, the Commission expressed great confidence that marketplace forces would control excessive commercialization. However, it did recognize the possibility that marketplace forces would not work effectively in all cases. In particular, it noted "[o]ne potentially troublesome situation" was the fear that stations which "have a unique format or audience in a larger community" would be able to commercialize at levels so excessive as to be contrary to the public interest. Radio Deregulation, supra, at 1005.

Even as it expressed confidence that marketplace forces would prove adequate to the task, the Commission promised that

> [i]f prolonged and blatant excesses occur in defiance of the best interest of the public, then again, we can revisit the area and take appropriate action in another rulemaking.

Id. at 1006.

In the years which followed, this promise was not kept. Having spurned various commenters' warnings that marketplace forces would not always restrict excessive commercialization, the Commission repeatedly ignored viewer and Congressional complaints about overcommercialization. These complaints have concerned both categories as to which the Commission acknowledged possible concerns: unique audiences (e.g., children) and specialized formats

(e.g., home shopping).

In the case of children's programming, Congress ultimately found that FCC inaction required its intervention through enactment of the Children's Television Act of 1990, P.L. 101-437, placing specific limits on the amount of commercialization during hours when children are in the audience. The House Committee Report states that:

> The Committee finds that The Children's Television Act of 1989 [sic] is necessary because total reliance on the market to hold advertising to an acceptable level during children's programming has been shown to have produced a tangible expansion in the level of commercialization in children's programming.

H.R. 101-385 at 8.

In the same vein, the Commission has refused to address complaints of excessive commercialization by home shopping stations. See, e.g., Family Media Inc., 2 FCC Rcd 2540, 2542 (1987). Going further, the Commission ultimately held that it would not even consider the nature of applicants' programming in processing applications. Declaratory Ruling

Cong. Rec. E2908 (daily ed. October 2, 1992). In it, Rep. Eckart sought, and received, confirmation from Chairman Dingell that Section 4(g)(2)

> requires the Federal Communications Commission to conduct a de novo review of the overall regulatory treatment of [home shopping stations], notwithstanding prior proceedings the FCC has conducted which may have permitted or had the effect of encouraging such stations' practices.

Id.; see also, H. Rep. 102-628 at 171-174 (additional remarks of Reps. Ritter, Tauzin, Slattery, Kostmayer, Oxley and Fields). He also received assurances, inter alia, that it was intended that the Commission

> in determining whether these program formats are consistent with the public interest, [the Commission should consider] whether it should take steps to prohibit, limit, or discourage such activities, and whether prior agency decisions should be revised in light of this new statutory mandate.

Id.

The Commission must now confront the fact that its prior predictions were wrong. Use of a full-time home shopping format permits evasion of marketplace forces and, as a result, the public interest. The FCC must now revisit this area reassert its authority to regulate overcommercialization in circumstances where the marketplace has failed.

III. REFUSING TO LICENSE BROADCAST STATIONS WHICH ARE PREDOMINANTLY DEVOTED TO HOME SHOPPING IS CONSISTENT WITH THE

commercialization, because its primary mandate under the First Amendment is to promote the "paramount" First Amendment right of the public "to receive suitable access to social, political, esthetic, [and] moral," information over the broadcast medium. Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969). Regulation of commercial speech is subject to far lower levels of constitutional scrutiny. Thus, a Commission decision not to license broadcast stations predominantly devoted to home shopping or program length commercials need only "reasonably fit" the government's important interest in protecting the public's right to receive information on important issues.

A. Home Shopping Programming is Commercial Speech.

It is beyond doubt that under Supreme Court precedent, the 55 minutes of commercial matter during a typical hour of home shopping programming is "commercial speech." The same is true for "infomercial" programming.

Since the 1970's the Court has applied a content based standard in determining whether speech can be properly classified as commercial. See, e.g., Virginia Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976).[8] The inquiry is whether the speech does "no more than propose a commercial transaction." Id. at 762, quoting Pittsburgh Press Co. v. Human Relations Commission, 413 U.S. 376, 385 (1973); Central Hudson Gas and Electric Corp. v. Public Service Commission of New York, 447 U.S. 557, 562 (1980); Bolger v. Youngs Drug Products Corp., 463 U.S. 60, 66 (1983); Bd. of Trustees of the State University of New York v. Fox, 492 U.S. 469, 473 (1989).

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[8]Earlier cases defined commercial speech in terms of the primary purpose of the speech. See, e.g., Valentine v. Chrestensen, 316 U.S. 52 (1942). If the Court found a profit making motive, the speech was deemed commercial. Id. at 55.

Under Virginia Pharmacy and its progeny, home shopping programming and program length commercials fall squarely within the definition of commercial speech. That programming "proposes nothing more than a commercial transaction," in which viewers are offered consumer goods for immediate purchase. The programming is solely motivated by the licensees' desire to make money from the sale of the product. There is no pretense to esthetic interests - entertainment, art or enlightenment for its own sake.

B. Commercial Speech Enjoys Only Limited First Amendment Protection.

Commercial speech is entitled to only very circumscribed protection under the First Amendment. Indeed, that protection has been so eroded that one commentator has termed commercial speech an "endangered species." Comment, Commercial Speech after Posadas and Fox: A Rational Basis Wolf in Sheep's Clothing, 66 Tulane L. Rev. 1931, 1931 (1992).

Since Virginia Pharmacy, supra, where the Court found some protection for commercial speech, the Supreme Court has carefully delineated the scope of this latitude.[9] In Central Hudson, supra, the Court announced a four-part test for determining whether a regulation of commercial speech is constitutional. If the speech concerns lawful activity and is not misleading, and the asserted governmental interest is "substantial," the Court

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[9]Although the Court in Virginia Pharmacy struck down the regulations on commercial speech at issue in that case, it specifically noted that "the special problems of the electronic broadcast media," would warrant increased regulation of commercial speech. Id., at 773, citing Capitol Broadcasting Co. v. Mitchell, 333 F. Supp. 582, 584 (D.D.C. 1971), aff'd sub nom. Capitol Broadcasting Co. v. Acting Attorney General, 405 U.S. 1000 (1972). In Capitol Broadcasting, a three-judge District Court upheld the constitutionality of a broadcast ban on cigarette advertising, in part because "[t]he unique characteristics of electronic communication make it especially subject to regulation in the public interest." Id.

C. There is a "Reasonable Fit" Between The Government's Interest In Promoting the Creation of a Well-Informed Electorate And Restricting Broadcast Licenses To Stations Which Are Not Predominantly Devoted to Home Shopping Programming or Program Length Commercials.

Section 2 of the 1992 Cable Act sets out the core governmental interest behind Section 4 of the Act. That interest is maintenance of an informed electorate through exposure both to a "diversity of views provided through multiple technology media," 1992 Cable Act §2(a)(6), and to local news and public affairs programming through the broadcast medium. 1992 Cable Act §2(a)(11). But the public's access to speech concerning public affairs over broadcasting is more than just an important governmental interest. This is a "paramount" objective of the First Amendment which supersedes a broadcaster's right to use its frequency in any way it pleases. Red Lion Broadcasting Co., supra, at 390.

Restrictions on stations predominantly utilized for home shopping and infomercial programming thoroughly advance Congress' interest. Home shopping and infomercial programming are nothing more than the offering of goods for sale. They add nothing to the public discourse on issues and ideas. Unlike entertainment programming, they have no artistic, social or literary value. A determination that stations predominantly utilized for home shopping and program length commercials would advance Congress' interest further because Section 4(g)(2) of the Act would afford them "a reasonable period within which to provide different programming," that would have some political, social, moral or esthetic value.[11]

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[11]By permitting licensees of stations predominantly utilized for home shopping programming or program length commercials to change their programming, Section 4(g) does not deny these licensees the ability to speak over their airwaves. These licensees "have lost no right to speak - they have only lost an ability to collect revenue...for broadcasting their commercial messages." Capitol Broadcasting Co. v. Mitchell, supra, at 584.

IV. BROADCAST STATIONS WHICH ARE PREDOMINANTLY DEVOTED TO HOME SHOPPING DO NOT SERVE THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY.

The Commission notes that the 1992 Cable Act requires the Commission to consider three specific factors in making a determination of whether home shopping stations are operating in the public interest, i.e., 1) the viewing of home shopping stations by the public; 2) the level of competing demands for the spectrum allocated to such stations; and 3) the role of such stations in providing competition to nonbroadcast services offering similar programming.

CSC is generally of the view that these factors are important, but are by no means the only factors to be considered in this inquiry. Perhaps the most critical question the Commission must ask here is

> whether a broadcaster, which arguably meets or slightly exceeds the minimal programming standards the Commission has set out for meeting community needs, and which uses the remainder of its programming for purely commercial matter designed to serve its own private, pecuniary interest, is operating in the public interest?

CSC believes the answer is "no."

A. Three Factors To Be Considered Pursuant to 1992 Cable Act.

CSC will briefly discuss the three factors the Commission must specifically address pursuant to the 1992 Cable Act.

1. Viewing of Home Shopping Stations By The Public.

As a general matter, the Commission does not make licensing decisions based on whether a station has high viewership. Such a marketplace-driven decision would probably eliminate the licensure of public television stations, the ratings of which are historically much lower than those of most commercial stations. These stations typically program to meet certain

viewer needs which are not provided by commercial stations, and therefore the measure of their viewership should not be a consideration.

However, in the absence of any indication that home shopping stations are providing programming intended to serve unmet needs of the community, it is appropriate for the Commission to take into account the low viewership of home shopping stations.

2. Competing Demands for Spectrum.

Congress has also directed the Commission to take into account the level of competing demands for spectrum allocated to such stations. In CSC's view, this is an important and legitimate factor which strongly favors a conclusion that sales presentation formats are contrary to the public interest.

CSC and other representatives of members of the viewing public strongly support the reservation of significant amounts of spectrum for broadcasting on the basis that such stations serve the public interest. Free over the air television is a universally available vehicle to entertain, educate, enlighten and inform the American public, which is a major constituent in the common culture we have as Americans. It is for this reason that CSC and other public interest representatives have also supported provisions of the 1992 Cable Act which preserve and strengthen free over the air television.

Dedication of more than 50 percent, and in some cases more than 90 percent of a broadcast day to pure commercial speech is incompatible with the special privileges which have been afforded to broadcasters under Title III of the Communications Act. Thus, especially given the FCC's mandate in Section 303(g) of the Communications Act "to encourage the larger and more effective use of radio in the public interest...," CSC respectfully suggests that

the Commission can and should consider whether certain non-broadcast uses of the television band are more in the public interest than home shopping formats. While this judgment should not be made with respect to stations not meeting the definition adopted in this proceeding, it is

competition among such stations is undermined by the growing common ownership of the largest cable (QVC) and the largest broadcast (HSN) home shopping services. It is widely reported that a merger of the two companies may soon take place.[12]

B. Home Shopping Stations Do Not Operate In the Public Interest Because 55 Minutes of Each Hour of Its Programming Is Devoted To Commercial Presentations Which Benefit the Private Pecuniary Interests of the Licensee.

Those broadcasters which operate home shopping stations will no doubt emphasize the five minutes of "public interest" programming each hour which many of them carry. They will cite it as evidence that they adequately serve the interest and needs of their communities of license. But this programming, no matter how good or responsive to community needs it might be, is not determinative by itself of whether these stations are operating in the public interest.[13]

What is critical to the public interest determination is the fact that the remaining 55 minutes of each hour contains nothing more than purely commercial matter. CSC has already established that overcommercialization is antithetical to the public interest. See discussion at pp. 5-10, infra. Measured by any standard, 55 minutes of commercial matter per hour far

[12]The acquisition of HSN by Liberty Media was approved by the Department of Justice notwithstanding common ownership of Liberty and QVC. It is reported that approval was granted because the relevant market for home shopping is considered to be the larger retail

exceeds any level of commercialization that the Commission has permitted in the past. E.g., Rush Broadcasting Corp., 42 FCC2d 483 (1973); Channel Seventeen, Inc., 42 FCC2d 529 (1973) (29 minutes of commercial matter per hour not permissible). Thus, the Commission can, and must, find that a station which predominantly utilizes its station for broadcasts of 55 minutes of commercial matter per hour is not serving the public interest.

V. IMPLEMENTATION OF SECTION 4(g)(2): TRANSITION PERIODS AND RENEWAL EXPECTANCIES.

In the event that the Commission were to determine that formats predominantly devoted to sales presentations do not serve the public interest, Section 4(g)(2) contemplates that such licensees will be afforded "a reasonable period" to migrate to a new format. Section 4(g)(2) also addresses the renewal expectancy to be afforded to such stations.

A. Transition Away from Home Shopping-Type Formats.

The Commission's NOPR asks for guidance on how to administer the required transition to a new format. NOPR ¶13. As to that, the CSC agrees that a substantial period, perhaps 18 months, should be afforded. This time frame should be long enough to include the TV industry's entire syndicated programming sales cycle, and give ample time for negotiations with emerging occasional networks as well.

B. Renewal Expectancies For the Transitional Period.

The Commission's NOPR does not ask the second question which would arise. At least as important as how much time the licensee should be permitted to make its transition to a non-sales presentation format is the question of what renewal expectancy these licensees should receive for the prior renewal period during which a home shopping format was utilized. CSC

mance in its non-home shopping programming be especially strong to justify receipt of a renewal expectancy.

Section 4(g)(2) provides that a renewal expectancy should not be denied "solely because their programming consisted predominantly of sales presentations or program length commer-

commercial programming would be especially important in this one-time event of a renewal following completion of the present proceeding.

2. If Home Shopping Is Found Not to Be in the Public Interest, Licensees Should Nonetheless Be Held to a Very High Standard For their Non-commercial Programming to Be Regarded as Meriting a Renewal Expectancy.

While Congress has properly given licensees a grace period to transition into a non-sales program format, Congress did not intend that this should amount to a free pass in the next license renewal. CSC describes here how the FCC should approach the issue of what renewal expectancy is to be given stations which used a home shopping format in the preceding license term. In this situation, the non-commercial programming should be of especially meritorious quality and quantity to justify the absence of entertainment, sports and other programming of greater First Amendment consequence than mere commercialization.

First, the Commission should particularly consider the amount and placement of programming designed to meet the informational and educational needs of children. Insofar as commercial matter is not - or should not be - directed to children in large amounts, the non-commercial material inserted during periods otherwise directed to the sale of products to adults is a questionable place to place programming directed to children. In the absence of <u>any</u> other programming likely to address the needs of children in such formats, the amount of programming specifically designed for children would be of particular importance, as would the daypart in which such programming appeared.

Another reason why the licensees' non-commercial matter would have to be especially meritorious to justify a renewal expectancy for a home shopping station is because of the absence of entertainment and other non-commercial programming other than public affairs on a typical home shopping station. In awarding renewal expectancy, the Commission has